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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,296	09/29/2003	Michael Mittelstein	P03115	3208
23702	7590	11/15/2005		
Bausch & Lomb Incorporated One Bausch & Lomb Place Rochester, NY 14604-2701			EXAMINER SAYOC, EMMANUEL	
			ART UNIT 3746	PAPER NUMBER
DATE MAILED: 11/15/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/673,296	MITTELSTEIN ET AL.	
	Examiner	Art Unit	
	Emmanuel Sayoc	3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/29/03, 3/31/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The informal drawings are of sufficient quality for examination purposes only. Accordingly, new formal drawings are required at the time the application is allowed. Failure to timely submit new formal drawings at the time of allowance will result in **ABANDONMENT** of the application.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Steppe et al. (U.S. 4,713,051).

Steppe et al. in Figure 1 teach a peristaltic pump capable of being used in ophthalmic surgery comprising a housing (23), a pump head (labeled in Figure 1, Figure 12, 82) having a plurality of rollers (labeled in Figure 1, Figure 12, 82) held within the housing (23), and a backing plate (32) attached to the housing (when engaging cassette

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20) and for cooperation with the pump head (labeled in Figure 1, Figure 12, 82). The device also includes a surgical cartridge or cassette (20) including a length of resilient tubing (labeled in Figure 1, Figure 12, 62) connected to a collection bag (see label in Figure 1) and for connection to a surgical aspiration (see label in Figure 1) device via additional tubing (see two types of tubing in the cartridge 20), and a cartridge holder (26) drawer (cartridge housing 28, 36 constitutes a drawer fitting into 26) for holding the surgical cartridge (20). As the cartridge (20) is inserted into holder (26), the pump head translates (linearly towards and away relative to the housing cartridge 20 and plate 32, and rotatingly relative to the housing 23). The drawer cartridge (28, 36) is moveable from an open position (see Figure 1) to an operative position (Figure 12), wherein the pump head (82) moves relative to the housing (23 rotates in housing) such that after the drawer moves from the open position (Figure 1) to the operative position (Figure 12), the pump head is moved toward the backing plate (32), such that the rollers and the backing plate (32) cooperate to peristaltically pump aspirant through the length of tubing as the pump head (82) is rotated. In the open position, surgical tubing is easily inserted between the pump head (82) and the backing plate.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references are cited to further show the state of the art with respect to surgical pumping systems.

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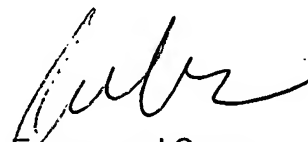
U.S. Pat. 4,735,558 to Kienholz et al., 5,676,530 to Nazarifar, 5,213,483 to Flaherty et al., 4,201,525 to Brown et al., 4,256,442 to Lamadrid, and 5,267,956 to Beuchat – teach various surgical pump systems and various tube and cartridge engagements.

Contact Information

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel Sayoc whose telephone number is (571) 272 4832. The examiner can normally be reached on M-F 8-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy S. Thorpe can be reached on (571) 272-4444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Emmanuel Sayoc
Examiner
Art Unit 3746

ECS